

RULE DEVELOPMENT AND ADOPTION



THE 2008 POLICY OF THE BOARD OF FORESTRY AND FIRE PROTECTION

GOVERNOR

ARNOLD SCHWARZENEGGER

SECRETARY OF THE RESOURCES AGENCY

MICHAEL CHRISMAN

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OVERVIEW

In 2007, the board adopted a Policy to receive an annual report from the department and to solicit public input for the review of forest practice rules. This review is tied to the board's strategic policy program. The review is designed to provide for public and Agency input and transparency in the process of reviewing existing rules and determining the need for revisions or additions to the FPR.

The following policy addresses rule development and the timeline needed for public hearings, adoption and approval by the Office of Administrative Law of new rules.

In February of 2007 a concept paper was developed to form the basis of this policy. This concept paper was meant to reflect how rulemaking would proceed with the addition of science-based review. This science-based review was to be facilitated by the Board's revived Research and Science Committee. In the course of the past year, staff has developed a charter and an outline for the development of this committee.

A key limitation that has been identified is the lack of funding and staffing that are required to fully develop complex and technical rules. It is imperative that the Board have an efficient process that allows it to identify and prioritize its actions. It is also important that the efficiencies in this process allow for compliance with the Administrative Procedures Act and the California Environmental Quality Act.

The attached rule making timelines assume that the Board wishes to pass a rule and have it go into affect on the next January 1 (This is not applicable to fire protection regulations, only forest practice rules). The rulemaking calendar assumes no special meetings, and that any actions that were required to be taken would be done by the Board at regularly scheduled meetings.

Rule Development Phase (3-12 months before 45 day notice proposal)

1. Define a perceived need for a rule.
 - a. Problems
 - b. Issues
 - c. Goals
2. Staff and/or the Research and Science Committee will review or direct the review of pertinent literature and scientific information.
 - a. Gray literature.
 - b. Peer-reviewed.
 - c. Regulatory programs, planning documents and other information.
 - d. Develop the standards of significant impacts
3. Summarize and synthesize information.
 - a. Abstracts
 - b. Compare and contrast information sources.
 - c. Clarify the problem and develop the scope
4. Develop the factual record.
 - a. Defined areas of strong and weak agreement.
 - b. Verify the need for a rule
 - c. Future research needs.
 - d. Develops a basis for rule structure.
 - e. Review alternatives to rule (education, BMPs, monitoring)
 - f. Assess economic and fiscal impact
5. Develop guidance for rule development
 - a. Clear problem statement
 - b. Well-defined science and policy.
 - c. Standards for determining adequate measures to prevent or reduce impacts or restore resources.
6. Develop Draft Rule Language
 - a. Clarity
 - b. Enforceability
 - c. Consistency with existing rules
 - d. Regional application
7. Hold stakeholder workshops for public and Agency participation in rule development. This step may need to occur earlier in the development process or more than once for complex regulations.
8. Finalize rule package, begin flowchart timelines.

Rule Adoption Phase

The attached flowchart reflects a rulemaking procedure that includes a 45 day notice for rulemaking and an allowance for 15 day notice. Once the assigned committee is satisfied with Steps 1-7 above, the committee would refine and finalize rule packages (Step 8, above). It would then bring the final product before the full board for its consideration. The board would then put the rule packages out for a 45 day notice. This means that it would be two months before the board (regularly scheduled meetings) would hear the rule package.

At that hearing, the board would not only take comment, but would consider staff's recommendations for the rule package. The Board would **not** be taking a final action. Instead, they would be directing staff to finalize a rule package based upon the Board's tentative recommendations. In the flowchart, we refer to this as a tentative adoption of the preferred alternative.

At the next regularly scheduled board meeting, staff would submit a report including comment responses and findings, based upon the previous direction from the board. The Board would consider these, and direct staff to prepare the final documents.

At the next regularly scheduled board meeting following that, the board would adopt the responses and findings as well as the final rule.

This schedule indicates that final rules must be ready for notice no later than around March or April. This allows for two months for initial public hearing notice, two months for the development of responses and findings, and the final action that will take place in September.

This process relies on the Board to identify rules that it intends to pass in the next calendar year, rules that it intends to pass in a calendar year after that, and so forth. If the new priority is identified, that spreadsheet is modified to reflect the new priority. As an example, if the board identified the need to develop road rules, but discovered some months later that watercourse classification was of higher priority, it would drop the road rules development and replace it with the new priority.

BOF Regulatory Adoption Process and dates (Complex regulations with 15 day renote)

